IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1261 OF 2003

Prakash Rangrao Gurav
Occ.:Agri., R/o. Punvat
Tal.:Shirala, Dist.:Sangli ... Appellant

V/s.

The State of Maharashtra
through Public Prosecutor
High Court, Appellate Side
Mumbai ... Respondent

a/w

CRIMINAL APPEAL NO.1265 OF 2003

Smt.Shashikala Bhagwan Patil
Occ.:Agriculture, R/o. Punvat
Tal.:Shirala, Dist.:Sangli ... Appellant

V/s.

The State of Maharashtra
through Public Prosecutor
High Court, Appellate Side
Mumbai ... Respondent

Mr.Shekhar Ingawale with Mr.Pratap Patil for Appellants
Mrs.P.H. Kantharia, A.P.P., for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **MAY 3, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. These two Appeals are directed against the judgment of the 1st Ad-hoc Additional Sessions Judge, Islampur. Both the accused had been convicted for the murder of Savita Prakash Gurav. They have been

sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer further R.I. for six months. The appellant in Appeal No.1261 of 2003 has also been convicted and sentenced for the offence punishable under section 498-A of the Indian Penal Code. The Appellant in Appeal No.1261 of 2003 was accused No.1 before the Sessions Court and the appellant in Criminal Appeal No.1265 of 2003, was Accused No.2. For the sake of convenience, the appellants will be referred to as the 'accused' hereinafter.

2. It is the case of the prosecution, as revealed from the evidence before us, that Savita, the wife of Accused No.1 was being ill treated by him. Accused Nos.1 and 2 had illicit relations. Savita questioned her husband - Accused No.1 about his relations with Accused No.2. Irked by these questions, both the accused on 8.3.2000 set fire to Savita. Savita sustained 86% burn injuries and succumbed to those injuries. Two dying declarations of Savita have been recorded, one on 9.3.2000 and the second on 10.3.2000, which are at Exhibits 13 and 14 respectively. According to the prosecution, the accused have committed the offence punishable under section 302 r/w 34 of the Indian Penal Code. Apart from this offence, the prosecution has also sought to establish that Accused

No.1 had subjected the deceased to cruelty and had committed the offence punishable under section 498A of the Indian Penal Code. On the death of Savita on 22.3.2000, the accused were arrested and were tried for the offences punishable under section 302 r/w section 34 and 498-A of the Indian Penal Code. The 1st Ad-hoc Additional Sessions Judge, Islampur has found both the accused guilty of the offence punishable under section 302 r/w section 34 of the Indian Penal Code. Accused No.1 has also been convicted for the offence punishable under section 498-A of the Indian Penal Code.

3. The learned Advocate for the Accused urges that the conviction and sentence of the accused is not based on any evidence. He submits that the prosecution has failed to establish any case against the accused. The dying declarations which are relied on by the prosecution are according to the learned advocate materially inconsistent with each other and, therefore, ought not to have been accepted by the trial Court. A conviction based on dying declarations which are inconsistent with each other is not maintainable according to the learned Advocate in view of the various pronouncements of the Apex Court. He, therefore, submits that the appeals be allowed and the convictions and sentences be quashed and set aside.

4. The prosecution has based its case on the evidence of four witnesses and the two dying declarations. The first dying declaration was recorded on 9.3.2000 by PW2, the police head constable, Vishrambag Police Station. This dying declaration has been endorsed by the Medical Officer, PW1. PW1 has certified the declarant as being in a condition to give a valid statement. This declaration it appears has been recorded at about 1.30 am, soon after the incident which occurred on the night of 8.3.2000. The deceased has stated that on 8.3.2000 when she was completing the household chores at night, her husband returned home and insisted that she should return to her parental home. He started abusing her. The deceased has stated that she questioned him about his illicit relations with accused No.2 and demanded that he put an end to the affair. Accused No.1 did not relent and continued to abuse her. He hired a jeep, telephonically, for taking the deceased to her parental home. The declarant had then stated that in a fit of rage, she emptied a can of kerosene which was available in the house on herself and set fire to herself. She has stated that her husband, accused No.1, was present in the room when she attempted to commit suicide. The neighbours gathered around her and tried to extinguish the fire when she cried out for

help after she felt the heat of the injuries. She has then stated that she was removed to the hospital at Shirala in a jeep. This declaration indicates that the burn injuries caused to the deceased were suicidal and were not on account of any overt act by the accused. However, she has mentioned in the declaration that she had a complaint against both the accused.

5. Contrary to this dying declaration is the next one which is recorded on 10.3.2000 and is at Exhibit 14. This declaration has also been recorded by PW2. PW1 has certified that the deceased was conscious and oriented and was in a condition to give a valid statement. The statement was recorded at 5 O'clock in the evening. However, the dying declaration at Exhibit 14 is an antithesis of the earlier one. In Exhibit 14, the declarant has stated that when she was working at home at about 8.30 at night, her husband-accused No.1 returned and started abusing her without any rhyme or reason. She requested him to refrain from doing so. Accused No.2 arrived on the spot and also began abusing the declarant. According to the declarant, she requested both of them to stop abusing her. The deceased was then held still by Accused No.1 while accused No.2 emptied the can of kerosene on Savita. Accused No.1 then set fire to her saree. Accused No.2,

according to the declarant, ran away from the scene. Savita then started shouting for help and her neighbours including her in-laws attempted to extinguish the fire by dousing her with water. She has also stated that thereafter she was removed from the hospital in a jeep. She then has stated that Accused No.1 threatened her and told her to inform the police that she had sustained burn injuries on account of the stove bursting. She then states that it is on account of the threats given by Accused No.1 that she did not mention these facts in the dying declaration recorded on 9.3.2000.

6. The two dying declarations are completely contrary to each other. The second one implicates both the accused whereas the first, which was recorded immediately after the incident, does not state that the burn injuries were sustained by the declarant on account of any overt act of the accused. She in fact has stated that she emptied the kerosene can on herself in a fit of rage and set afire to herself.

7. PW3, who is the mother of the deceased, claims that the deceased informed her that accused No.2 had poured kerosene on her and accused No.1 had set afire to her. PW4 who is the sister of the deceased corroborates the evidence of her mother. She has also stated that

the deceased had informed her that after two or three months of her marriage, her ill-treatment by Accused No.1 commenced. According to this witness, accused No.1 did not behave himself with the deceased Savita and was continuously ill treating her by making various demands on her mother. However, the evidence does not establish beyond reasonable doubt the complicity of the accused in the death of Savita.

8. The defence has also examined the medical officer attached to the Primary Health Center, Shirala at the relevant time. This witness has deposed to the fact that accused No.1 had injuries on the lower 1/3rd of both his forearms. The Doctor has opined that the injuries were possible due to burns. He has also admitted that such injuries could be sustained while extinguishing a fire.

9. Considering all the evidence before us and the dying declarations, we are not satisfied that the prosecution has established a case against either of the accused. The first statement of the victim recorded indicates that the burn injuries were sustained by the victim because of an attempt to commit suicide. In complete contrast is the second dying declaration which implicates both the accused and points to the death

being homicidal. Inconsistency in material particulars in both the declarations would in our view be fatal to the case of the prosecution unless there is some other evidence to corroborate either of these declarations. The depositions of the witnesses do not inspire any confidence. In our opinion, the prosecution has also failed to prove that accused No.1 is guilty of the offence punishable under section 498-A of Indian Penal Code.

10. In the result, the appeals are allowed. The Accused shall be set free, if not required for any other offence.